

Title	Receivership Rules (adopt Cal. Rules of Court, rule 1902.5 and amend rule 1908)
Summary	Rule 1902.5, on the amount of undertakings, would be added to the rules on receiverships. Rule 1908, on the receiver's final account, would be amended (1) to provide that not only the final account and report, but also a request for discharge and a request for exoneration of the receiver's surety should be brought by noticed motion, and (2) to clarify who must be given notice of the motion.
Source	Civil and Small Claims Advisory Committee
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Discussion	<p>The receivership rules of the California Rules of Court were relocated and expanded, effective January 1, 2002. A court rules committee has recommended that certain provisions be added to improve and clarify these rules.</p> <p><u>Rule 1902.5, Amount of undertakings</u></p> <p>A new rule concerning undertakings would be adopted. This rule would provide that the applicant for the appointment of a receiver must propose, and state the reasons for, the specific amount of the undertakings required under Code of Civil Procedure sections 529, 566(b), and 567(b) for any injunction ordered with the appointment. Any other party may propose, and state the reasons for, the amount it regards as appropriate.</p> <p>Because orders appointing a receiver are usually accompanied by a preliminary injunction requiring the parties to turn over property to the receiver and to cooperate with the receiver, an undertaking is required by Code of Civil Procedure section 529 to support the preliminary injunction. The purpose of such an undertaking is to protect the party who opposes the receivership from loss if the applicant fails to prevail on the merits of the underlying action for which the receivership and injunction are provisional remedies. The amount of the undertaking is usually set by estimating the value of lost opportunities that will be suffered by the opposing party because of loss of control over the property, plus the amount of attorney's fees that will have to be expended to vacate the preliminary injunction.</p>

When the receiver is appointed ex parte, an additional undertaking is required by Code of Civil Procedure section 566(a), to protect the opposing party from damage that will be suffered during the brief period that the receivership is in effect, if the ex parte appointment is not confirmed. The amount of the undertaking is usually determined in a manner similar to the undertaking required by Code of Civil Procedure section 529.

Finally, the receiver's undertaking required by Code of Civil Procedure section 567 is in the nature of a fidelity bond to protect the parties from misappropriation by the receiver of property entrusted to him or her. The amount is usually set by estimating the value of cash, or assets easily convertible to cash, that the receiver will have in his or her possession at any one time.

The new rule would require the applicant to explain the basis for the specific amount of the undertaking proposed and give others an opportunity to agree with the applicant or to explain that some alternative amount is more appropriate.

Rule 1908, Motion on receiver's final account and report

Rule 1908, which requires the receiver to file a final report and account for approval by noticed motion, would be amended. First, the rule would be amended to permit stipulations by all parties as well as noticed motions for the types of orders specified.

Second, the rule would be modified to add to the orders that are required to be applied for by noticed motion: (1) a request for discharge of the receiver from his or her duties, (2) a request for exoneration of the receiver's undertaking, and (3) a request for instructions. Experienced receivers generally make these requests in the same motion as the final account and report. Their addition to the rule will promote good procedures and greater economy in this area of practice.

Third, a new provision would be added to rule 1908 regarding what notice must be given of the motion or stipulation to approve the final account and report. When the court grants such a motion or there is such a stipulation, it affects the rights of persons and entities with whom the receiver has dealt in the performance of his or her duties. Such persons or entities may not have appeared in the underlying action for which the receivership is a provisional remedy and may not

even be parties to such action. Although notice to such persons or entities is not required by section 1014 of the Code of Civil Procedure or other statute, fundamental fairness requires that such persons or entities be given notice of such motion or stipulation and so have an opportunity to be heard. The amended rule would require the receiver to give notice to “every person or entity known to the receiver to have a substantial, unsatisfied claim that will be affected by the order or stipulation, whether or not such person or entity is a party to the action or has appeared in it.” The term “substantial unsatisfied claim” is used to provide a practical, flexible standard that will insure proper persons or entities are notified of any significant claim that affects them. Comments are invited on this proposed standard.

Fourth, rule 1908 has been reorganized to contain four subdivisions, (a)–(d). Subdivision (a) contains the proposed new provisions that add requests for discharge, requests for exoneration, and requests for instructions to the matters that must be determined by a noticed motion or a stipulation of all parties. Subdivision (b) contains a new provision that no memorandum is required for motions and stipulations brought under the rule, unless the court so orders. Subdivision (c) contains the proposed new notice requirements. And subdivision (d) contains the existing requirements relating to the information that must be provided if the final accounting claims any allowance of compensation for the receiver or an attorney employed by the receiver.

Attachments

PROPOSAL

Rules 1902.5 would be adopted and 1908 of the California Rules of Court would be amended, effective January 1, 2004, to read:

Rule 1902.5. Amount of undertakings

At the hearing of an application for appointment of a receiver on notice or ex parte, the applicant must, and other parties may, propose and state the reasons for the specific amounts of the undertakings required from

(1) the applicant by Code of Civil Procedure section 529,

(2) the applicant by Code of Civil Procedure section 566(b), and

(3) the receiver by Code of Civil Procedure section 567(b)

for any injunction that is ordered in or with the order appointing a receiver.

Rule 1908. Receiver's final account and report

(a) [Motion or stipulation] A receiver must present by noticed motion or stipulation of all parties:

(1) A final account and report ~~by noticed motion;~~

(2) A request for the discharge;

(3) A request for exoneration of the receiver's surety; and

(4) A request for instructions.

(b) [No memorandum required] No memorandum of points of authorities needs to be submitted in support of the motion or stipulation served and filed under (a) unless the court so orders.

(c) [Notice] Notice of the motion or of the stipulation must be given to every person or entity known to the receiver to have a substantial, unsatisfied claim that will be affected by the order or stipulation, whether or not such person or entity is a party to the action or has appeared in it.

1 **(d) [Claim for compensation for receiver or attorney]** If any allowance of
2 compensation for the receiver or for an attorney employed by the receiver is
3 claimed in ~~the~~ an account, it must state in detail what services have been
4 performed by the receiver or the attorney, and whether previous allowances
5 have been made to the receiver or attorney and the amounts.